

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG**

**WEST VIRGINIA HIGHLANDS
CONSERVANCY, INC. and
SIERRA CLUB,**

Plaintiffs,

v.

**Civil Action No. 1:12-cv-00025
Honorable Irene Keeley**

**CORESCO, LLC and
MEPCO, LLC,**

Defendants.

MOTION FOR MODIFICATION OF CONSENT DECREE

Pursuant to Fed. R. Civ. P. 60(b), Coresco, LLC and Mepco, LLC (collectively “Defendants”) move to modify the terms of the November 12, 2014 Consent Decree (“Consent Decree”) (Doc. 70) because of a material change in circumstances that renders performance of certain injunctive provisions impractical and unnecessary.

As part of the Consent Decree resolving this suit, Defendants agreed to collect and pump effluent from two seeps near Crafts Run to a separate water treatment facility approximately 2.8 miles to the northwest (the “Bowlby Mills AMD Facility”), where the water is to be treated and ultimately discharged. Doc. 70, ¶ 12. Defendants also agreed to diligently pursue any additional permits or authorizations from the West Virginia Department of Environmental Protection (“WVDEP”), which would be necessary to effectuate the piping and treatment of effluent. Doc. 70, ¶ 13. Defendants request that Paragraphs 12 and 13 of the Consent Decree be modified for two primary reasons.

First, the water can now be treated on Coresco’s permit site (“on-site”), which is much more practical. Since entering into the Consent Decree, Defendants have engaged in an exit

from the coal industry. Today, Defendants are not mining or processing coal at any location, including the site that is the subject of the Consent Decree. Instead, Defendants are using their remaining resources – which are limited – to reclaim historic operations. While Defendants no longer have the capital necessary to construct the pumping system envisioned by the Consent Decree, Defendants have applied for and been granted the appropriate permits from WVDEP to treat the water on-site at facilities that were previously dedicated to the mining and processing of coal, but which are no longer needed for that purpose. Accordingly, Defendants can accomplish the ultimate goal of the Consent Decree—treatment of flows from Seeps 2 and 4 along Crafts Run—but in a more cost-effective and practical manner.

Second, it no longer makes sense from an environmental perspective to pump the water into a different watershed. Importantly, Plaintiffs recently brought a lawsuit alleging that the National Pollutant Discharge Elimination System (“NPDES”) permit associated with the Bowlby Mills AMD Facility as also discharging effluent that is high in conductivity. As a result, it would be counterproductive to pump even more high-conductivity water to a site Plaintiffs have identified as having the same water quality problem.

Taken together, these facts establish a significant change in circumstances warranting a revision of the Consent Decree pursuant to the Rule 60(b)(5) standard articulated in *Rufo v. Inmates of Suffolk County*, 502 U.S. 367, 380, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992). For the reasons expressed above, and as more fully explain in the accompanying memorandum, Defendants respectfully request that their motion for modification be granted as described above.

Respectfully submitted,

CORESCO, LLC,
MEPCO, LLC

By Counsel

/s/Shane Harvey

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CERTIFICATE OF SERVICE

I, M. Shane Harvey, do hereby certify that on January 3, 2020, I electronically filed the foregoing MOTION FOR MODIFICATION OF CONSENT DECREE with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

J. Michael Becher, Esq.
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s/ M. Shane Harvey
M. SHANE HARVEY